

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MARCI A. G. FLEMING, individually, as representative of a class of participants and beneficiaries of the Rollins, Inc. 401(k) Savings Plan and Western Industries Retirement Savings Plan,

Plaintiffs,

v.

ROLLINS, INC., AS ADMINISTRATOR OF THE ROLLINS, INC. 401(K) SAVINGS PLAN; WESTERN INDUSTRIES NORTH, AS ADMINISTRATOR OF THE WESTERN INDUSTRIES RETIREMENT SAVINGS PLAN; THE ADMINISTRATIVE COMMITTEE OF THE ROLLINS, INC. 401(K) SAVINGS PLAN; THE ADMINISTRATIVE COMMITTEE OF THE WESTERN INDUSTRIES RETIREMENT SAVINGS PLAN; THE INVESTMENT COMMITTEE OF THE ROLLINS, INC. 401(K) SAVINGS PLAN; THE INVESTMENT COMMITTEE OF THE WESTERN INDUSTRIES RETIREMENT SAVINGS PLAN; AND JOHN DOES 1-30,

Defendants.

CASE NO. 1:19-cv-05732-WMR

DEFENDANTS ROLLINS, INC. AND WESTERN INDUSTRIES-NORTH, LLC'S MOTION TO DISMISS

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants Rollins, Inc. and Western Industries-North, LLC¹ (“Defendants”) hereby move to dismiss Plaintiff’s Complaint [Doc. 1]. As set forth more fully in the accompanying Memorandum of Law, (1) Plaintiff’s claims are barred by her failure to exhaust her administrative remedies prior to filing suit; (2) Plaintiff fails to assert allegations establishing Plaintiff has constitutional standing to pursue any claims; (3) the Complaint is a “shotgun pleading” that fails to meet the standards of Federal Rule 8(a); (4) the Complaint fails to state a plausible claim for breach of fiduciary duty; (5) the Complaint fails to allege any plausible claim for failure to monitor, breach of loyalty, or that a prohibited transaction occurred; and (6) Plaintiff’s claims are barred by ERISA’s six-year statute of repose to the extent they are based on allegations of conduct occurring prior to December 20, 2013.

WHEREFORE, for the reasons set forth in the Memorandum, Defendants respectfully request that the Court dismiss the Complaint in its entirety.

Respectfully submitted this 20th day of April, 2020.

¹ Western-Industries, North, LLC was misidentified in the Complaint as Western Industries North.

**BRYAN CAVE LEIGHTON PAISNER
LLP**

/s/ W. Bard Brockman

W. Bard Brockman, Georgia Bar No. 084230

bard.brockman@bclplaw.com

Michael P. Carey, Georgia Bar No. 109364

michael.carey@bclplaw.com

Ann Ferebee, Georgia Bar No. 431941

Ann.ferebee@bryancave.com

One Atlantic Center, 14th Floor

1201 West Peachtree Street, N.W.

Atlanta, Georgia 30309

Telephone: (404) 572-6600

Facsimile: (404) 572-6999

Jeffrey S. Russell (*pro hac vice* pending)

jsrussell@bclplaw.com

Meredith Jacobowitz (*pro hac vice* pending)

meredith.Jacobowitz@bclplaw.com

211 North Broadway, Suite 3600

St. Louis, Missouri 63102

Telephone: (314) 259-2000

Facsimile: (314) 259-2020

*Attorney for Rollins, Inc. and Western
Industries-North, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing
**DEFENDANTS ROLLINS, INC. AND WESTERN INDUSTRIES-NORTH,
LLC'S MOTION TO DISMISS** with the Clerk of Court using the CM/ECF
system which will send email notification of such filing to all counsel of record.

This 20th day of April, 2020.

/s/ W. Bard Brockman
W. Bard Brockman
Georgia Bar No. 084230

*Attorney for Rollins, Inc. and Western
Industries-North, LLC*